

110TH CONGRESS
1ST SESSION

S. 1567

To amend the Public Utility Regulatory Policies Act of 1978 to provide
a renewable portfolio standard, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2007

Ms. KLOBUCHAR introduced the following bill; which was read twice and
referred to the Committee on Energy and Natural Resources

A BILL

To amend the Public Utility Regulatory Policies Act of 1978
to provide a renewable portfolio standard, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. RENEWABLE PORTFOLIO STANDARD.**

4 (a) IN GENERAL.—Title VI of the Public Utility Reg-
5 ulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is
6 amended by adding at the end the following:

7 **“SEC. 610. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

8 “(a) RENEWABLE ENERGY REQUIREMENT.—

9 “(1) IN GENERAL.—Each electric utility that
10 sells electricity to electric consumers shall obtain a

1 percentage of the base amount of electricity it sells
 2 to electric consumers in any calendar year from new
 3 renewable energy or existing renewable energy. The
 4 percentage obtained in a calendar year shall not be
 5 less than the amount specified in the following table:

“Calendar year:	Minimum annual percentage:
2010	1
2011	2
2012	4
2013	6
2014	8
2015	10
2016	12
2017	14
2018	16
2019	18
2020	20
2021	21
2022	22
2023	23
2024	24
2025	25.

6 “(2) MEANS OF COMPLIANCE.—An electric util-
 7 ity shall meet the requirements of paragraph (1)
 8 by—

9 “(A) submitting to the Secretary renewable
 10 energy credits issued under subsection (b);

11 “(B) making alternative compliance pay-
 12 ments to the Secretary at the rate of 2 cents
 13 per kilowatt hour (as adjusted for inflation
 14 under subsection (g)); or

15 “(C) a combination of activities described
 16 in subparagraphs (A) and (B).

1 “(b) RENEWABLE ENERGY CREDIT TRADING PRO-
2 GRAM.—

3 “(1) IN GENERAL.—Not later than July 1,
4 2009, the Secretary shall establish a renewable en-
5 ergy credit trading program under which electric
6 utilities shall submit to the Secretary renewable en-
7 ergy credits to certify the compliance of the electric
8 utilities with respect to obligations under subsection
9 (a)(1).

10 “(2) ADMINISTRATION.—As part of the pro-
11 gram, the Secretary shall—

12 “(A) issue tradeable renewable energy
13 credits to generators of electric energy from
14 new renewable energy;

15 “(B) issue nontradeable renewable energy
16 credits to generators of electric energy from ex-
17 isting renewable energy;

18 “(C) issue renewable energy credits to elec-
19 tric utilities associated with State renewable
20 portfolio standard compliance mechanisms pur-
21 suant to subsection (h);

22 “(D) ensure that a kilowatt hour, including
23 the associated renewable energy credit, shall be
24 used only once for purposes of compliance with
25 this Act;

1 “(E) allow double credits for generation
2 from facilities on Indian land, and triple credits
3 for generation from small renewable distributed
4 generators (meaning those no larger than 1
5 megawatt); and

6 “(F) ensure that, with respect to a pur-
7 chaser that, as of the date of enactment of this
8 section, has a purchase agreement from a re-
9 newable energy facility placed in service before
10 that date, the credit associated with the genera-
11 tion of renewable energy under the contract is
12 issued to the purchaser of the electric energy.

13 “(3) DURATION.—A credit described in sub-
14 paragraph (A) or (B) of paragraph (2) may only be
15 used for compliance with this section during the 3-
16 year period beginning on the date of issuance of the
17 credit.

18 “(4) TRANSFERS.—An electric utility that holds
19 credits in excess of the quantity of credits needed to
20 comply with subsection (a) may transfer the credits
21 to another electric utility in the same utility holding
22 company system.

23 “(5) DELEGATION OF MARKET FUNCTION.—
24 The Secretary may delegate to an appropriate mar-
25 ket-making entity the administration of a national

1 tradeable renewable energy credit market for pur-
2 poses of creating a transparent national market for
3 the sale or trade of renewable energy credits.

4 “(c) ENFORCEMENT.—

5 “(1) CIVIL PENALTIES.—Any electric utility
6 that fails to meet the compliance requirements of
7 subsection (a) shall be subject to a civil penalty.

8 “(2) AMOUNT OF PENALTY.—The amount of
9 the civil penalty shall be determined by multiplying
10 the number of kilowatt-hours of electric energy sold
11 to electric consumers in violation of subsection (a)
12 by the greater of 2 cents (adjusted for inflation
13 under subsection (g)) or 200 percent of the average
14 market value of renewable energy credits during the
15 year in which the violation occurred.

16 “(3) MITIGATION OR WAIVER.—The Secretary
17 may mitigate or waive a civil penalty under this sub-
18 section if the electric utility was unable to comply
19 with subsection (a) for reasons outside of the rea-
20 sonable control of the utility. The Secretary shall re-
21 duce the amount of any penalty determined under
22 paragraph (2) by an amount paid by the electric
23 utility to a State for failure to comply with the re-
24 quirement of a State renewable energy program if

1 the State requirement is greater than the applicable
2 requirement of subsection (a).

3 “(4) PROCEDURE FOR ASSESSING PENALTY.—
4 The Secretary shall assess a civil penalty under this
5 subsection in accordance with the procedures pre-
6 scribed by section 333(d) of the Energy Policy and
7 Conservation Act of 1954 (42 U.S.C. 6303).

8 “(d) STATE RENEWABLE ENERGY ACCOUNT PRO-
9 GRAM.—

10 “(1) IN GENERAL.—The Secretary shall estab-
11 lish, not later than December 31, 2008, a State re-
12 newable energy account program.

13 “(2) DEPOSITS.—All money collected by the
14 Secretary from alternative compliance payments and
15 the assessment of civil penalties under this section
16 shall be deposited into the renewable energy account
17 established pursuant to this subsection. The State
18 renewable energy account shall be held by the Sec-
19 retary and shall not be transferred to the Treasury
20 Department.

21 “(3) USE.—Proceeds deposited in the State re-
22 newable energy account shall be used by the Sec-
23 retary, subject to appropriations, for a program to
24 provide grants to the State agency responsible for
25 developing State energy conservation plans under

1 section 362 of the Energy Policy and Conservation
2 Act (42 U.S.C. 6322) for the purposes of promoting
3 renewable energy production, including programs
4 that promote technologies that reduce the use of
5 electricity at customer sites such as solar water
6 heating.

7 “(4) ADMINISTRATION.—The Secretary may
8 issue guidelines and criteria for grants awarded
9 under this subsection. State energy offices receiving
10 grants under this section shall maintain such
11 records and evidence of compliance as the Secretary
12 may require.

13 “(5) PREFERENCE.—In allocating funds under
14 this program, the Secretary shall give preference—

15 “(A) to States in regions which have a dis-
16 proportionately small share of economically sus-
17 tainable renewable energy generation capacity;
18 and

19 “(B) to State programs to stimulate or en-
20 hance innovative renewable energy technologies.

21 “(e) RULES.—The Secretary shall issue rules imple-
22 menting this section not later than 1 year after the date
23 of enactment of this section.

24 “(f) EXEMPTIONS.—This section shall not apply in
25 any calendar year to an electric utility—

1 “(1) that sold less than 4,000,000 megawatt-
 2 hours of electric energy to electric consumers during
 3 the preceding calendar year; or

4 “(2) in Hawaii.

5 “(g) INFLATION ADJUSTMENT.—Not later than De-
 6 cember 31 of each year beginning in 2008, the Secretary
 7 shall adjust for inflation the price of a renewable energy
 8 credit under subsection (b)(2) and the amount of the civil
 9 penalty per kilowatt-hour under subsection (c)(2).

10 “(h) STATE PROGRAMS.—

11 “(1) IN GENERAL.—Nothing in this section di-
 12 minishes any authority of a State or political sub-
 13 division of a State to adopt or enforce any law or
 14 regulation respecting renewable energy, but, except
 15 as provided in subsection (c)(3), no such law or reg-
 16 ulation shall relieve any person of any requirement
 17 otherwise applicable under this section. The Sec-
 18 retary, in consultation with States having such re-
 19 newable energy programs, shall, to the maximum ex-
 20 tent practicable, facilitate coordination between the
 21 Federal program and State programs.

22 “(2) REGULATIONS.—

23 “(A) IN GENERAL.—The Secretary, in con-
 24 sultation with States, shall promulgate regula-
 25 tions to ensure that an electric utility subject to

1 the requirements of this section that is also
2 subject to a State renewable energy standard
3 receives renewable energy credits in relation to
4 equivalent quantities of renewable energy asso-
5 ciated with compliance mechanisms, other than
6 the generation or purchase of renewable energy
7 by the electric utility, including the acquisition
8 of certificates or credits and the payment of
9 taxes, fees, surcharges, or other financial com-
10 pliance mechanisms by the electric utility or a
11 customer of the electric utility, directly associ-
12 ated with the generation or purchase of renew-
13 able energy.

14 “(B) PROHIBITION ON DOUBLE COUNT-
15 ING.—The regulations promulgated under this
16 paragraph shall ensure that a kilowatt hour as-
17 sociated with a renewable energy credit issued
18 pursuant to this subsection shall not be used
19 for compliance with this section more than
20 once.

21 “(i) RECOVERY OF COSTS.—

22 “(1) IN GENERAL.—The Commission shall issue
23 and enforce such regulations as are necessary to en-
24 sure that an electric utility recovers all prudently in-

1 curred costs associated with compliance with this
2 section.

3 “(2) APPLICABLE LAW.—A regulation under
4 paragraph (1) shall be enforceable in accordance
5 with the provisions of law applicable to enforcement
6 of regulations under the Federal Power Act (16
7 U.S.C. 791a et seq.).

8 “(j) WIND ENERGY DEVELOPMENT STUDY.—The
9 Secretary, in consultation with appropriate Federal and
10 State agencies, shall conduct, and submit to Congress a
11 report describing the results of, a study on methods to
12 increase transmission line capacity for wind energy devel-
13 opment.

14 “(k) DEFINITIONS.—In this section:

15 “(1) BASE AMOUNT OF ELECTRICITY.—The
16 term ‘base amount of electricity’ means the total
17 amount of electricity sold by an electric utility to
18 electric consumers in a calendar year, excluding mu-
19 nicipal waste and electricity generated by a hydro-
20 electric facility (including a pumped storage facility,
21 but excluding incremental hydropower).

22 “(2) DISTRIBUTED GENERATION FACILITY.—
23 The term ‘distributed generation facility’ means a
24 facility at a customer site.

1 “(3) EXISTING RENEWABLE ENERGY.—The
 2 term ‘existing renewable energy’ means, except as
 3 provided in paragraph (7)(B), electric energy gen-
 4 erated at a facility (including a distributed genera-
 5 tion facility) placed in service prior to January 1,
 6 2001, from solar, wind, or geothermal energy, ocean
 7 energy, biomass (as defined in section 203(a) of the
 8 Energy Policy Act of 2005), or landfill gas.

9 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
 10 thermal energy’ means energy derived from a geo-
 11 thermal deposit (within the meaning of section
 12 613(e)(2) of the Internal Revenue Code of 1986).

13 “(5) INCREMENTAL GEOTHERMAL PRODUC-
 14 TION.—

15 “(A) IN GENERAL.—The term ‘incremental
 16 geothermal production’ means for any year the
 17 excess of—

18 “(i) the total kilowatt hours of elec-
 19 tricity produced from a facility (including a
 20 distributed generation facility) using geo-
 21 thermal energy; over

22 “(ii) the average annual kilowatt
 23 hours produced at such facility for 5 of the
 24 previous 7 calendar years before the date
 25 of enactment of this section after elimi-

1 nating the highest and the lowest kilowatt
2 hour production years in such 7-year pe-
3 riod.

4 “(B) SPECIAL RULE.—A facility described
5 in subparagraph (A) that was placed in service
6 at least 7 years before the date of enactment of
7 this section shall, commencing with the year in
8 which such date of enactment occurs, reduce
9 the amount calculated under subparagraph
10 (A)(ii) each year, on a cumulative basis, by the
11 average percentage decrease in the annual kilo-
12 watt hour production for the 7-year period de-
13 scribed in subparagraph (A)(ii) with such cu-
14 mulative sum not to exceed 30 percent.

15 “(6) INCREMENTAL HYDROPOWER.—The term
16 ‘incremental hydropower’ means additional energy
17 generated as a result of efficiency improvements or
18 capacity additions made on or after January 1,
19 2001, or the effective date of an existing applicable
20 State renewable portfolio standard program at a hy-
21 droelectric facility that was placed in service before
22 that date. The term does not include additional en-
23 ergy generated as a result of operational changes not
24 directly associated with efficiency improvements or
25 capacity additions. Efficiency improvements and ca-

1 capacity additions shall be measured on the basis of
 2 the same water flow information used to determine
 3 a historic average annual generation baseline for the
 4 hydroelectric facility and certified by the Secretary
 5 or the Federal Energy Regulatory Commission.

6 “(7) NEW RENEWABLE ENERGY.—The term
 7 ‘new renewable energy’ means—

8 “(A) electric energy generated at a facility
 9 (including a distributed generation facility)
 10 placed in service on or after January 1, 2001,
 11 from—

12 “(i) solar, wind, or geothermal energy
 13 or ocean energy;

14 “(ii) biomass (as defined in section
 15 203(b) of the Energy Policy Act of 2005
 16 (42 U.S.C. 15852(b));

17 “(iii) landfill gas; or

18 “(iv) incremental hydropower; and

19 “(B) for electric energy generated at a fa-
 20 cility (including a distributed generation facil-
 21 ity) placed in service prior to the date of enact-
 22 ment of this section—

23 “(i) the additional energy above the
 24 average generation in the 3 years pre-

1 ceding the date of enactment of this sec-
 2 tion at the facility from—

3 “(I) solar or wind energy or
 4 ocean energy;

5 “(II) biomass (as defined in sec-
 6 tion 203(b) of the Energy Policy Act
 7 of 2005 (42 U.S.C. 15852(b));

8 “(III) landfill gas; or

9 “(IV) incremental hydropower.

10 “(ii) incremental geothermal produc-
 11 tion.

12 “(8) OCEAN ENERGY.—The term ‘ocean energy’
 13 includes current, wave, tidal, and thermal energy.

14 “(l) SUNSET.—This section expires on December 31,
 15 2040.”.

16 (b) TABLE OF CONTENTS AMENDMENT.—The table
 17 of contents of the Public Utility Regulatory Policies Act
 18 of 1978 (16 U.S.C. prec. 2601) is amended by adding at
 19 the end of the items relating to title VI the following:

“Sec. 610. Federal renewable portfolio standard.”.

